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7  
 8 IN THE UNITED STATES DISTRICT COURT  
 9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,	) No. CR 08-0329 JSW
11	)
12 Plaintiff,	) DEFENDANT'S
13 v.	) STATEMENT REGARDING
14 TIMOTHY CRAIG,	) GOVERNMENT'S LATE
15 Defendant.	) FILING OF OPPOSITION
16	) <b>Hearing Date:</b> Thursday,
	) September 25, 2008 at 2:30
	) p.m.

17  
 18 The defense files this statement to inform the Court that it will file its Reply in the  
 19 above-entitled case on the current briefing schedule, that the Court will still have a full  
 20 two weeks to review the briefing, and that it does not seek a continuance of the motion  
 21 hearing in light of the government's late-filed Opposition.

22 At the last appearance on the above-captioned matter, counsel for Mr. Craig and  
 23 the government jointly proposed a briefing schedule on a Fourth Amendment motion.  
 24 That briefing schedule was adopted by the Court.

25 The defense filed its Fourth Amendment motion to suppress at 4:30 p.m. on the  
 26 date promised in this original schedule. *See Docket Entry 28.*

27 Shortly before the government's Opposition was due AUSA Denise Barton  
 28 contacted undersigned counsel and requested a brief continuance, to permit the  
 government to file its Opposition on August 24, 2008 instead of August 21. The

1 government proposed taking the additional days out of the Court's time allotted to review  
2 the motion. The defense agreed to this request. This Court also generously agreed to the  
3 government's proposed new schedule. *See Docket Entry 34.*

4 The government then filed its Opposition on August 26, 2008, two days after the  
5 date agreed-upon in the stipulation. *See Docket #37.* In an "Ex Parte Motion for Extension  
6 to File by USA," the government represented that the Opposition – filed at 4:24 a.m. –  
7 was roughly four hours late and that the defense would not be prejudiced by the late  
8 filing. *Id.* In reality, however, the Opposition was two days late.

9 The government's delay in filing the Opposition was presumably caused by  
10 extenuating and extraordinary circumstances. Similarly, it is clear that the government's  
11 misstatement in its "Ex Parte Motion for Extension to File" was inadvertent.

12 The defense would like to keep the September 25th hearing date, and would also  
13 like to provide the Court a full opportunity to review the parties' briefing in a complex  
14 suppression motion. Therefore, the defense will "absorb" the time lost by the  
15 government's late Opposition, and will still file its Reply before the close of business on  
16 the date agreed upon in the August 20th order: September 10, 2008. As contemplated in  
17 the August 20th order, the Court will have a full two weeks to review the briefing before  
18 the hearing on the 25th.

19 The Court need take no action; the briefing schedule adopted in its August 20th  
20 order can remain in place. The defense will be prepared to argue the suppression motion  
21 on the scheduled date of September 25th.

22 Respectfully submitted,

23 August 27th, 2008  
24 DATED

BARRY J. PORTMAN  
Federal Public Defender  
Northern District of California

25 /s

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27 STEVEN G. KALAR  
28 Assistant Federal Public Defender